

REMARKS

Claims 1-54 are pending in the application.

Claims 1-54 have been rejected.

Claims 1, 4, 10, 17, 20, 23, 47, 48, 51 and 52 have been amended, as set forth herein.

Claims 13 and 26 have been canceled, without prejudice.

I. **REJECTION UNDER 35 U.S.C. § 102**

Claims 1, 4-5, 8-10, 13-17, 22-23, 28-29, 47 and 48 were rejected under 35 U.S.C. § 102(b) as being anticipated by McDonough (US Patent No. 5,625,748). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Applicant reiterates and incorporates by reference its prior assessment of McDonough and its arguments and remarks made in response to this same rejection. In addition, and to further prosecution, Applicant has amended independent Claims 1, 10, 17, 23, 47, 48 (and 51 and 52).

These claims have been amended to recite, generally, (1) receiving a one of: a user-specified word and a user-specified phrase from a user, the received user-specified word or phrase corresponding to a word or phrase having a corresponding stored voice representation; and (2) analyzing the voice message (or voice information) to determine if one or more of the stored voice representations corresponding to the received user-specified word or phrase occur in the voice message (or voice information) and to generate a final criteria measurement value . . . the final criteria measurement value based on the value associated with each determined stored voice representation occurring in the voice message.

The Office Action (addressing dependent Claim 4) appears to argue that McDonough discloses a user specifying keywords which are included in analyzing the voice message/voice information, citing McDonough, Col. 12, lines 1-27 and Col. 2, lines 1-17. McDonough teaches that keywords or event are “selected” by a human operator for initial modeling in the internal structure of the event detector. McDonough, Col. 12, lines 1-14. Thus, there is no disclosure of the user-specified words being received (or otherwise input) by the user. McDonough states the keywords are “selected” by a human operator, and this selection is used for initial modeling purposes. Also, there does not appear to be any disclosure in McDonough describing that the voice message (or voice information) is analyzed to determine if one or more of the stored voice representations corresponds to the received user-specified word or phrase occurs in the voice message (or voice information). McDonough appears to utilize numerous keywords – selected at the initial modeling of the device – and uses these to conduct hypothesis tests or calculate distance metrics. McDonough, Col. 12, lines 1-10. McDonough does not appear to described receiving a keyword from a user, and analyzing the voice message (or voice information) to determine if a stored voice representation of the user-specified keyword is found therein, and then generating a criteria measurement value (as recited in the claims).

Moreover, McDonough utilizes keywords selected from a human operator which are related to modeling of them in the structure of the event detector. McDonough, Col. 12, lines 1-4. This fails to disclose, as recited in Applicant’s dependent claims 4 and 20, that a user-specified word or phrase is input by the user after the voice message is received, and then analyzing of the voice message is performed after the user inputs the word or phrase (that is to be searched for). See, Claims 4 and 20.

Based on the foregoing, McDonough fails to show each and every element of Applicant’s invention as recited in the amended independent Claims 1, 10, 17, 23, 47, and 48 (and their dependent claims). Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(b) rejection of Claims 1, 4-5, 8-10, 13-17, 22-23, 28-29, 47 and 48.

III. REJECTIONS UNDER 35 U.S.C. § 103

Claims 2, 11, 18, 24, 30, 32, 35-37, 39-41, 43-44, 46 and 49-50 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough (US Patent No. 5,625,748) in view of Furui (Sadaoki Furui, "Digital Speech Processing, Synthesis, and Recognition," Marcel Dekker, Inc., New York, 1989, pp. 225-289). Claims 6-7, 20-21, 26-27 and 51-52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough (US Patent No. 5,625,748) in view of Epstein (US Patent No. 6,327,343). Claims 3, 12, 19, 25, 31, 33-34, 38, 42, 45 and 53-54 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McDonough (US Patent No. 5,625,748) in view of Furui (Sadaoki Furui, "Digital Speech Processing, Synthesis, and Recognition," Marcel Dekker, Inc., New York, 1989, pp. 225-289), and further in view of Epstein (US Patent No. 6,327,343). The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142. In making a rejection, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), viz., (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007))).

As described above, independent Claims 1, 10, 17, 23, 47, and 48 are allowable over McDonough. Neither Furui or Epstein appear to cure the deficiencies of McDonough. Therefore, those dependent Claims 2-3, 6-7, 11-12, 18-21 and 24-27 are allowable.

The Office Action categorizes independent Claims 30, 37, 41, 44, 49 and 50 (and their dependent Claims) as reciting essentially the same subject matter, and therefore relies on the rejection of independent Claim 30 to reject these other independent Claims. See, Office Action, pages 11-14. Applicant respectfully submits that McDonough fails to recite analyzing a voice message to determine if the voice message exhibits a “predetermined pattern of speech,” where the predetermined pattern of speech represents “at least one of a tone of speech in the voice message and a frequency of the speech in the voice message.” The predetermined pattern of speech is “a tone of the speech in the voice message” or “a frequency of the speech in the voice message.” Spotting simply the words and phrases using HMMs is not equivalent to determine if a pattern of speech exhibits a tone or frequency – such as *if a message is urgent, a caller may speak rapidly, be out of breath or be speaking in a high pitch*. See, Applicant's Specification, page 7, lines 7-11.

The Examiner appears quite knowledgeable regarding speech recognition and, therefore, can appreciate that conventional Hidden Markov Modeling (HMM) relates to phonemes - which modeling is unrelated and relatively inapplicable for detecting overall tone or frequency of speech. A purpose, goal or effect of HMMs is to perform speech recognition by ignoring or filtering out the effects of tone or frequency on that speech. Thus, HMM appears to deliberately eliminate tone or frequency as a factor in speech recognition.

It does not appear that Furui discloses such feature or elements either. While Furui may teach about the essential nature of voice containing frequency and tone (of each small portion) and modeling by phonetic HMMs, as noted in the Office Action, this is not equivalent or even similar to analyzing if a predetermined pattern of speech in a voice message exhibits a tone of speech or frequency of speech – as described in Applicant's specification. Thus, the two references appear to teach away from Applicant's recited invention in independent Claims 30, 37, 41, 44, 49 and 50.

Therefore, independent Claims 30, 37, 41, 44, 49 and 50 (and their dependent Claims) are not obvious in view of McDonough-Furui.¹

Similarly, regarding independent Claims 51-54, the Office Action relies on Epstein simply to show the use of a computer readable medium. Independent Claims 51 and 52 have been amended, as noted above. Epstein fails to cure the noted deficiencies in McDonough. Therefore, these claims are allowable for the reasons set forth above. In addition, the Office Action also fails to indicate that Epstein discloses analyzing a voice message to determine if the voice message exhibits a "predetermined pattern of speech," where the predetermined pattern of speech represents "at least one of a tone of speech in the voice message and a frequency of the speech in the voice message" as recited in Claims 53-54. See Applicant's response above with respect to independent Claims 30, 37, 41, 44, 49 and 50.

¹ In addition, McDonough fails to show analyzing the tone and/or frequency of speech in a voice message to determine which action to perform. The Office Action points to Furui as teaching this element/feature. Furui does not appear to describe performing one of the stored actions - as that term is described in the Applicant's specification - if the predetermined speech (a tone of speech or a frequency of speech) is found to occur.

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejections of Claims 2-3, 6-7, 11-12, 18-21, 24-27, 30-46 and 49-54.

III. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at rmccutcheon@munckcarter.com.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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